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MARCH 30, 1918

A SECOND REMONSTRANCE OR, DECLARATION OF THE LORDS and COMMONS Assembled in Parliament, CONCERNING THE Commission of *Array*, occasioned by a Booke lately published, intituled His Majesties Answer to the Declaration of both Houses of Parliament concerning the said Commission.

Wherein their said former Declaration is fully vindicated; The maine arguments to uphold the said Commission of *Array* are refuted, and the same Commission proved to be against the fundamentall Lawes and Statutes of this Kingdom the Petition of Right, the Liberty, and property of the Subject, and contrary to former Presidents in Parliament.

Die Lunæ, January 16.

ORdered by the *Lords and Commons assembled in Parliament*, That this *Declaration be forthwith printed and published.* I. Brown Cler. Parliamentorum.

LONDON,
Printed for *Iohn Wright*, and *Richard Best*, *Ianuary* 18. 1642.

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LIONEL DE JERSEY HARVARD
CLASS OF 1915
February, 1926

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A SECOND REMONSTRANCE OR, DECLARATION

Of the Lords and Commons Assembled in Parliament concerning the Commission of *Array*, occasioned by a Booke lately published intituled His Majesties Answer to the Declaration of both Houses of Parliament, concerning the said Commission of *Array*.

IT cannot be denied but the Parliament is the highest Court of judicature in the Kingdome, to it all other Courts are subordinate; This Court hath power to question judgements given in the highest Courts; Judges of other Courts have heretofore taken the advise of Parliament in cases of difficulty as they ought to doe; from judgements there had, by the fundamentall Lawes and

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constitutions of this Kingdome there can be no appeale. Therefore the Lords and Commons cannot but be very ſenſible of this extrajud ciall arraignment of a ſolemne Declaration, and reſolution by them heretofore made in Parliament, and conceive it a high breach of their priviledge ; That when they the Lords and Commons, the great councell of the King and Kingdom have upon mature deliberation reſolved the ſaid Commiſſion illegall as they have done, their reſolution ſhould in ſuch a way be arraigned and endeavoured to be reverſed and made voyd by any perſon whatſoever, although it be publiſhed in his Majeſties Name and by his authority.

This is their caſe ; her's an Anſwer framed by ſome that will not owne it themſelves, but it's publiſhed in his Majeſties Name ; This puts the Lords and Commons upon a great difficulty ; whether or no they ſhall make any further or other Declaration then that formerly made, leſt by ſo doing they ſhould ſeeme to admit of a ſuperiour power in any in an extrajudiciall way to queſtion the reſolution of Parliament, and ſo ſuffer a breach of their unqueſtionable rights and priviledges. But conſidering the deſtructive grounds layd in the ſaid anſwer which (if true) would bring all the ſubjects of *England* into unavoydable bondage and ſlavery, and that if they ſhould ſuffer ſuch a thing to paſſe without giving ſome ſatisfaction to the world concerning it, they might ſeeme not to be ſo carefull of their owne, and the Kingdomes liberties, as the truſt repoſed in them requires at their hands.

Therefore the ſaid Lords and Commons in Parliament by proteſtation, ſaving to themſelves al their rights and priviledges, and that whatſoever now or hertofore hath been done this way in this preſent Parliament may not be brought to example, or conſequence for hereafter to the prejudice of the priviledge of Parliament ; Doe declare and will make manifeſt to all the world that the grounds and poſitions layd down in the ſaid Anſwer for the maintenance of the ſaid Commiſſion are moſt dangerous, and illegall, tending to the utter deſtruction of property and liberty, and are ſuch, as (if they ſhould hold good in law) will not onely juſtify this Commiſſion of *Array* but all other charges whatſoever which His Majeſty hath heretofore impoſed or ſhall hereafter impoſe upon his people for defence of the Kingdome, not onely in times of danger, but whenſoever His Majeſty

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jesty hath heretofore pretended, or shall hereafter pretend or imagine danger.

Before we come to the particulars in the answer, it will be fit to set downe the effect of the Commission now in question. The first Commission of *Array* that came to our view and which is the president for all the rest, and that that's maintained in the Answer was that which was granted to the *Earles* of *Huntington* and *Devonshire*, and others for the County of *Leicester*, which we have set down at large in our former Declaration. In the preamble of this Commission His Majesty declares his desire *To resist the malice of his Enemies if they should presume to invade the Kingdome*; and further declares his pleasure *to dispose and take order for the safeguard of Himselfe, His Kingdome, and people as he is bound to doe*; And to effect this he nominates divers Commissioners, and gives them or any three of them power.

1. *To array and try all men at armes and armed men and Archers dwelling within the County, aswell within liberties as without.*

2. *To compell all that have able bodies and estates of their own, to provide Armes for themselves according to their estates and meanes*, and the Commissioners are to assesse and apportion their Armes *according to their discretions.*

3. *To distreyn all such as have able Estates in Lands or Goods (and are not able to serve themselves) to finde Armes for other men at Armes, and armed-men, and also Bowes and Arrowes*; But they must charge these *according to the quantity of their Lands and Goods*, and *so that they may reasonably beare it saving their degree*, that is, *so as they may live according to their former condition*, as the Answer expounds it.

4. *To put and hold the said men at armes, and armed-men into companies of thousands, hundreds, and twenties as it shall be convenient and needfull.*

5. *To conduct the said men at armes and armed men, and Archers in time of imminent danger aswell to the Sea-coasts, as to any other place, where and as often as need shall require to expell, vanquish and destroy the Kings said enemies*, For this, one of the said Earles or Master *Hastings* a e of the *Quorum.*

6. *To muster the said men at Armes and Armed men as often as neede shall require.*

7. *To proclaime and ordaine, and diligently to examine that all men at Armes and Armed men and Archers at musters doe bring their own armes,*

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and not other mens upon paine of forfeiture of the armes: Thoſe here are excepted that are *armed at other mens charges.*

8. *To arreſt, take and commit to priſon all thoſe that diſobey their commands, there to abide till by Law they be delivered.*

9. Then ther's Command given to the Commiſſioners upon their faith and allegiance, that *immediatly upon the receipt of the Commiſſion they cauſe to be arrayed and made ready, and to be called before them at ſuch times and places as they ſhall thinke fit, and as ſhall be leaſt hurtfull to the people, all ſuch as ought to be arrayed and muſtered.*

10. They have power to cauſe *Beacons to be ſet up at uſuall places for the diſcovery of the comming of the ſaid Enemies.*

11. Command is given *to all Earles, Barons, Knights, Majors, Bayliffs and other His Majeſties Subjects to attend counſell, and aide the ſaid* Commiſſioners or *any three of them.*

12. The Sheriffe of the County is commanded to *cauſe to appeare before himſelfe and the Commiſſioners, or any three of them all ſuch in the ſaid County, by whom the* Array *may be the better made, and compleated, at ſuch dayes, and places as the ſaid* Sheriffe *and the Commiſſioners or any three of them ſhall appoint, and to impriſon the Rebellious.* This is the ſubſtance of the Commiſſion.

It's apparent to all that ſee it, that this Commiſſion reacheth to the liberty of the perſons, and to the property of the Eſtates of all His Majeſties Subjects that have Eſtates: It ſubjects their perſons and Eſtates to the unlimited diſcretion of any three of the Commiſſioners; They may compell any His Majeſties Subjects that have Eſtates to provide what Armes they ſhall charge them with, and having provided them, to ſerve with them thẽſelves if they be able; they may cauſe them to muſter, and put them into Companies of hundreds and thouſands, and they may leade and conduct them from their owne habitations to the Sea-coaſts and from one County to another as oft as they ſhall conceive danger, and thinke it needfull (for the Commiſſioners are Judges of both; ſuch as obey them not, they may commit to priſon, there to remain, till by the law they be delivered; If any man other then ſuch as are armed at other mens charges ſhould ſerve with another mans Armes, the Armes are forfeited. If a man be not able to ſerve himſelfe, they may compell him to finde what armes they pleaſe for other men to ſerve with, So it be *Salvo ſtatu*, which is, *ſo he may live according*

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ing to his former condition (as the Answer expounds it) so that if a man worth 20000 pounds live but after the rate of 40, or 50 l. *per Annum* they may charge him to find Armes to the valeu of 18000 l. And yet that will be *Salvo statu* according to their exposition, for hee may yet *live according to his former condition*. This Commission extends to all men of Estates, aswell Lords as Commons.

The maine drift of the Answer is to maintaine, That the King by the Common Law may grant such a Commission as this is, upon this ground because it's *for the defence of the Kingdome*, And that *the power which he hath to grant it by the Common Law, is not taken away by the Petition of right, or any former Statute*, But the King notwithstanding any of them may *charge his subjects for defence of the Kingdome, so as the charge imposed come not to himselfe, nor to his particular advantage*.

These grounds thus layd extend not to the Commission of *Array* alone, but to all other charges that His Majesty shall impose upon his Subjects, upon pretence of defence of the Kingdome. For ther's the same reason of Law for any other charge that's pretended for defence, as for this; If His Majesty by the Common Law may charge his Subjects to finde Armes, and other things in the Commission enjoyned, because they are for defence of the Kingdome, by the same reason of Law he may command his people to build *Castles*, *Forts*, and *Bulwarks* and after to mantaine them with *Garrisons*, Armes and Victualls at their owne charges, and by the same reason he may compell his Subjects to find Ships and furnish them with Men, Amunition and Victualls, and to finde Souldiers, pay Coat and conduct money, provide Victualls for Souldiers and all other things necessary for an Army, these being as necessary for defence as any thing that can be done in execution of this Commission.

And for that exposition of the petition of right, and all other statutes therein recited (if it should hold) doth it not overthrow aswell the petition it selfe, as all other Lawes that have beene made for the Subjects benefit against taxes, and other charges, either in this, or any other Parliament?

These positions thus laid downe and maintained, doe shake the fundamentall Lawes of the Kingdome (the ancient birth-right of every

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Subject) both for the property of his goods, and liberty of his person; Nay they strike at the roote of Parliaments: what neede His Majesty call Parliaments to provide for the defence of the Realme, when himselfe may compell his Subjects to defend it without Parliaments? If these grounds should hold, what neede the Subjects grant subsidies in Parliament for defence of the Kingdome in times of reall danger, if the King for defence at any time when he shall onely conceive or pretend danger, may impose charges upon his Subjects without their consent in Parliament?

If the King may thus charge his Subjects persons and Estates in times of danger for defence of the Kingdome, who shall Judge of the danger? will not His Majesty be the sole Judge? If so, what remedy have his Subjects, if he misjudge? How shall the danger be tryed? If the King may declare the danger, and thereupon impose charges upon his Subjects for defence against that danger, what have they in any thing that they can call their owne? Are they not of freeborne Subjects become slaves, And doe they not hold their liberties and estates at his Majesties will and pleasure?

Before we come to the particular Answers of the things objected, we cannot but observe one thing out of this Commission, It's issued (as appeares by the Commission it selfe) for the defence of the King and Kingdome against an invasion, So that the authority thereby given to the Commissioners is onely to be executed *for the expelling vanquishing and destroying the Kings Enemies that shall presume to invade the Kingdome*: There are no words in the Commission to inable the Commissioners to arme, traine, and lead men, but onely against such as shall presume to invade the Kingdome: But whether this Commission be now issued and executed to prevent invasions, or to make void and null the Orders and Ordinances of the Lords and Commons in Parliament, and to protect those from their legall tryalls whom the Lords and Commons have Voted Delinquents and have accused of treason, or of other high crimes, and misdemeanors, we leave it to all men to judge; It's too apparent to be so, by severall Declarations lately published and by the instructions for the execution of the said Commission of *Array*, which being so, how farre this differs from the intendment and words of the Commission of 5. *H. 4.* So much insisted upon, let all the World Judge.

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But 'tis affirmed in the *Answer* (to make men in love with the Commission) that *ther's neither danger, inconvenience, or illegality in it.*

Is there not *danger* and *inconvenience* to have our persons and estates subject to the Arbitrary discretion and pleasure of three Commissioners? They charge a Subject with Arms at their pleasures, they compell him to go out of his County as they think fit, they imprison him for refusing to obey their commands, they without any processe of Law, they seize the Arms he serves with as forfeit, because they are not his own; Is there not *Inconvenience* in this? is it not an *Inconvenience* for a man to be compelled to leave his Family, estate and County, and all that's dear to him, at the pleasure of three Commissioners? But 'tis sayd, they cannot do this but *in time of danger*, and *when there is a necessity of defence*: It's true, But who is judge of the *neteſſity* or *danger* but the Commissioners themselves.

Suppose the Commissioners think ther's a necessity for a man; arming himselfe and going out of his County when ther's none; suppose further, That they charge a man with Arms beyond his estate, they think fit for one to go that's not able, and thereupon compell him to go, what remedy hath the Subject against the Commissioners in any of these cases? It's sayd, *They may be Indicted*; admit that to be so, what benefit is that to the party wronged? if the Indictment be found, there is only a Fine to the King, no dammage to the party grieved.

But tis sayd, That *the Arms that men are charged with are their own goods*, and that *the property remains in him that finds them*, so he loseth no property. To which we say, so were the *Ships* their own that were to be provided upon the *Ship-writs* yet compelling men to provide *Ships*, although for *defence of the Kingdom*; was resolved by the Lords and Commons *nullo contra dicente*, *to be against the Law of Property*, aswell as that of *finding victuals and wages*; doth it not take from the Subject the *property* of his goods when he must dispose them at anothers will and pleasure; he intends them to provide himselfe necessaries, to pay his debts, or provide for his children, &c. And the Commissioners enjoyn him with that money to buy *Arms*; doth not this take away his *property*? Therefore upon that which hath been sayd, the Lords & Commons

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doe affirm, as they did in their former Declaration, That if the sayd Commission were Legall, it would bring the Subjects of *England* to a heavier yoake of bondage, than the Ship-writs did; those only charged the estates of the Subjects, and when they had payed their money, they were freed; this chargeth their persons to continuall service, as long as the Commissioners please, and by this Commission, the Commissioners may multiply charges upon mens estates, as oft as they shall thinke fit.

The way taken to prove the Commission warranted by the Common-Law, is first, by *Reason*, secondly *Presidents* of severall times, wherein such Commissions have been granted.

The Argument urged to make it good by *Reason*, is from the *impossibility* of the Kings Protecting and defending his people, without his having power to grant such a Commission.

To answer this, we deny that there is an *impossibility* of *defence* without such power, and we affirm that the Kingdom may be defended in time of danger, without issuing such Commission, or executing such power. For, we say, That the Law hath provided severall wayes for provision of Arms, and for defence of the Kingdome in time of danger, without such a Commission. 1. All the *Tenures* that are of his Majesty by *Barony*, *Graund Serjeanty*, *Knights-service in Capite*, *Knights-service*, and other like Tenures, were all originally instituted for the defence of the Kingdome in time of war and danger, as appears by the Statute of 7 *E.* 1. of *Mortmayn*, which saith, *Servitia que ex hujusmodi feodis debentur ad defensionem Regni ab initio provisa fuerunt.* These *Tenures* in the *Conquerors* time were many, and since they are much encreased; and these are all bound to finde men and Arms, according to their Tenures, for the defence of the Kingdom.

Vide Chart. H. 1. irrotulat. in libro Rubro Scac. Coke Instit. 75. Bracton 36, 37. Britton 162. 35 H. 6. 41. Coke 8 105. Coke 6. 2. Cok Instit. 1. pars 193.

2. As those *Tenures* are for defence of the Kingdom, so the Law hath given to His Majesty divers *Priviledges* and *Prerogatives* for the same end and purpose; that with the profits of them, He should defend Himselfe and His people in times of danger; of which His Majesty is, and alwayes hath been in actuall Possession since His accesse to the Crown.

For the defence of the Kingdom, His Maiesty hath the profits of *Wardships*, *Liveries*, *Primer seisens*, *Marriages*, *Reliefes*, *Fines for Alienation*, *Customes*, *Mines*, *Wrecks*, *Treasuretrove*, *Escheats*, *Forfeitures*,

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feitures, and divers other the like *caſuall profits*, That by theſe He may be enabled to defend the Kingdom, and that he enioying them, His ſubiects might enioy their eſtates under His Protection free from *Taxes* and *Impoſitions* for defence: Therefore it is declared, 14 *E.* 3 *cap.* 1. That *all the profits ariſing of an ayd* then granted to the King by His people, and of *Wards, Marriages, Cuſtomes, Eſcheats*, and *other profits riſing of the Realm of* England, *ſhould be put and ſpent upon the ſafegard of the Realm of* England, *and on the Wars in* Scotland, France, *and* Gaſcoigne, *and no places elſewhere during the Wars.* And the Lords and Commons in *Rich.* 2. time (knowing the Law to be ſo) did (as appears by the Parliament Rolls 6 *Rich.* 2. *m.* 42.) paſſe a Petition, That *the King would live of His own Revenues, and that the Wards, Marriages, Releefs, Forfeitures, and other profits of the Crown, might be kept to be ſpent in the Wars, for the defence of the Kingdom,*

3. If the ſaid *Tenures* and *Caſuall profits* riſing by His Prerogative will not ſerve for defence, but more help is neceſſary, by the Fundamentall Laws and Conſtitutions of this Kingdom, His Maieſty is intruſted with a power to ſummon *Parliaments* as often as He pleaſes, for defence of Himſelfe, and His people, when His ordinary Revenues will not ſerve the turn; and there is no other legall way (when the others are not ſufficient) but this, and this laſt hath been ever found by experience, the moſt ſure and ſucceſſefull way for ſupply in time of eminent danger for defence of the Kingdom, and to this, the Kings of this Realme have in times of danger frequently had recourſe.

A main end why *Parliaments* are called, is for defence of the Kingdom, and that other ſupplies than thoſe before mentioned, cannot be made without a *Parliament*, appeareth by the Writ of Summons: In which the King ſhews His Reſolution to call a *Parliament*, *Pro arduis & urgentibus negotijs nos, ſtatum & defenſionem Regni noſtri Angliæ & Eccleſiæ Anglicanæ concernentibus*: Then there is a command to the Sheriffe to cauſe to be choſen 2 knights, &c. and to command them to appear at a day there ſet, *Ita quod iidem milites plenam & ſufficientem poteſtatem pro ſe & Communitate Comitatus pred. habeant ad faciendum & conſentiendum his que tunc & ibm. de Communi conſilio dicti Regni noſtri contigerit ordinari ſuper negotiis antedictis, Ita quod pro defectu poteſtatis hujuſmodi*

dicta negotia infecta non remanent quovismodo. This Writ shewes that this of defence is one of the mayne of those *arduæ Regni* for which a *Parliament* is and ought to be summoned; It further shews, That if the *Parliament* should fayle by not returning of knights and Burgesses that had such power for their Counties and Boroughs, the defence would fayl, *et dicta negotia* will be *infecta*, unperformed. And that is the cause our Ancestors have beene so carefull to provide for frequent calling of *Parliaments*: In *Edward* the 3. time, Laws were made to have a *Parliament* held every year, or more often if need was, and these being held as they ought to be, tis easie for the *Parliament* to take care for the defence in the *interim* between *Parliaments*.

By this that hath beene said, it appeares that there is no such impossibility for defence without this Commission as is pretended, but that the Kingdom may be as it hath been defended without it.

But admitting it should be so, that without this power to grant such a Commission the K. could not defend his people, It follows not that therfore he might grant such a Commission; It hath heretofore been said, *Without Tonnage and Poundage, His Majesty could not defend the Kingdom*: was it therefore due to him by Law, without a grant by *Parliament*? If he cannot defend the Kingdome without granting such Commissions, there must some new Law be made for defence of the Kingdom, either by enabling the issuing of such Commissions, or otherwayes as the wisedome of a *Parliament* shall think fit.

If by the Common Law the King might charge his Subjects for defence of the Kingdom in times of danger, those Princes were ill advised, that have desired aid of their Subjects for *publique defence* in such times, and engaged themselves without any *salvo iure* for repayment.

In *Richard* the Seconds time, The Kingdom was beset with enemies, both at sea and by land; by the advice of the then Privy Councell, there was a great Councell called of most of the Bishops, Lords, and other great men, and Sages of the Realm, to consider what was fit to be done in those difficulties: They met and concluded, That *there was an absolute necessity of a present preparation for defence, and that the Kings Coffers wanted money to do it.* They came (as the Record saith, *Rot. Parl. 2 R. 2. n. 3.* 45.

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to a finall resolution what was to be done in this case of extremity for the defence of the Kingdom: which resolution, *Scroop* then Lord Chancellor delivered unto all the Lords in the ensuing *Parliament*, and 'twas thus, *That since the last Parliament the sayd Councell met, and considering the great danger the Kingdome was in, and how money might be raised in ease of that eminent danger for the Kingdoms defence, which could not stay the delay of a Parliament, and how the Kings Coffers had not sufficient in them,* They all concluded that *money could not be had for such defence, without laying a charge upon the Comminalty, and that such charge could not be layd without a Parliament.*

Therefore the Lords and Sages then Assembled, did themselves for that time supply the present necessity with money by them lent, and advised a *Parliament* aswell for further supply, as for repayment of the moneys so lent.

The Kingdom cannot be in greater danger, neither can there be more need of supply for defence, than was in that case; yet they then declared there was no way for supply, without a *Parliament.*

The next Argument used to prove the Commission warranted by the Common Law, is from the *continuall practise of granting such* Commissions *in former times*, which is said to be *enough to declare an ancient Fundamentall Law, or at least to introduce a new one.* And for this, four Presidents are cited in the time of *Henry* the Third, and divers others in severall Kings Reigns, begining at 23 *Edw.* 1. and ending at 12 *Edw.* 4.

To answer these, if it should be admitted that some Commissions of this kinde haue issued; The question now is not *de facto* what hath been done, but what *de iure* may be done, and presidents without some confirmation by judiciall proceedings, are no binding Authorities in Law.

But more particularly to answer these presidents, and first that of the 14. of *Hen.* 3. *mem.* 5. There the Commission is to the Bishop of *Rochester*, to the then Steward of the Archbishop of *Canterbury*, and to the Sheriffe of the County of *Kent* and others, to compell men to be sworn and assessed to Arms, *as they were sworn in the time of King* John; In that Commission we observe, first, That the Assize is set to which they shall be sworn, and not left to the discretion of the Commissioners; and so is no warrant

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for this of ours yet that it ſelfe is not legall; Secondly, in that none are commanded to be ſworn or Aſſeſſed for any lands, but thoſe that are bound by their Tenures to finde Arms; Thirdly, By that Commiſſion men are ſworn and aſſeſſed to Arms, *as they were in the time of King* John, and it appears not that there was then any Law for *ſwearing men to Arms*, if there was not, the King by his Commiſſion could not compell men to be ſworn without an Act of *Parliament*; and it doth not appeare that there was any Law to compell men to be ſworn to Arms, before the Statute of *Wincheſter*, 13. *Ed.* 1. for if there were, that Statute as to that point had been to no purpoſe: Fourthly, in that Commiſſion there is no power for conducting men out of their Counties, as there is in this: Fiftly, neither is there any power for impriſoning in caſe of refuſall, as is in this; further, by the words of that Commiſſion it ſelfe, its rather implied that the King could not by Law, aſſeſſe men to Arms, and that that Commiſſion was rather a deſire of the King that his Subjects would ſo Arm themſelves, then any way intended to be compulſory; The words are, *Et quia prædicta forma non fuit eis prius ſufficienter oſtenſa mandavimus predicto vicecomiti quod ſi ea ad preſens prompta non habeant non ponat eos in defaultam nec ea occaſione aliquid de ſuo Capiat ſed eos diſtringat ad ea habend. de cetero ſub forma prædicta:* Before that time they were not *acquainted* with *this manner of Arming themſelves*; Therefore, *although they have not their Arms ready, they ſhall not ſuffer for their default, but ſhall be diſtrained to have them ready againſt another day*, If there had been any Law *for that manner of Arming*, by common intendment, the people could not have been *unacquainted* with it.

For that of *Math. Paris* of 36. *Hen.* 3. 'tis not to be found amongſt the Records of that time; he only ſaith, That *the King ſent forth Writs* for that purpoſe, but ſets not down there what the Writs were; howbeit in the *Additamenta* in the laſt Edition of *Math. Paris* in the fol. next after the *Adverſaria*, one of thoſe Writs are ſet down *verbatim*, which Writ did iſſue 26 *Hen.* 3. as appears by the Record, 26 *Hen.* 3. *m.* 10 *dorſ.* and bears *teſte* the ſame day of the moneth, there was then the ſame Chancellor, and it agrees with that which is cited to be 36 *Hen.* 3. which ſhews 'twas only the miſtake of *Math. Paris* of the year 36, for 26. But neither in that Writ ſet down in the *Additamenta*,

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or in the Record is there any mention of *priſtina conſuetudo* for iſſuing ſuch Writs; ſo that to prove that former cuſtome, ther's only the conjecture of an Hiſtorian; who ſo little underſtood it, that he miſtooke the Writ in time 10 years, and how weake a teſtimony that is to prove the Law to be ſo, all men will eaſily diſcern. Beſides, there is not any mention there for Muſtering or enrolling as in the Anſwer is ſaid there was: But in that Writt (tis true) all men are commanded to be ſworne to armes, and the particular aſsize is there expreſſed, and by the ſame Writt moſt of the things are commanded that are after enacted by the Statute of *Winchester*, 13. *E.* 1. So that they that go about to prove from that Writ, that the King at the Common-Law may grant a Commiſsion of Array, may as well therby prove the Common Law to be that the King may make a Law to have the force of an Act of Parliament either for impoſing Oathes upon his Subjects, or for impriſoning the perſons of ſuch as ſhall travell through a town from ſun ſet to ſun riſing; or compell the Hundred to repay ſuch money as any man hath bin robbed off within the Hundred; all which are contained in that Writ, and moſt of them are afterwards enacted in 13. *E.* 1. which they would not have been, had they bin legall before. But Writts or Commiſsions that iſſued onely in thoſe times will not make a concluding preſident to prove the Law, for in the ſame place where the Hiſtorian mentions the iſſuing of that Writt: He tels us of the differences betwixt the King and his people about their liberties; where he ſaith, the *King obſerved not the Statute of Magna Charta, nor Charta de Foreſta; Which much diſcontented the Subjects, as appears by their high expreſſions* there recited, which we purpoſely omitt to mention.

In thoſe times 'tis apparent that many illegall Writts and Commiſsions iſſued forth that diſcontented the people (amongſt which this might probably be one) which was the cauſe that the people did ſo often deſire to have the naming of their Chancellor, that ſo there might not be ſo many invaſions upon their Liberties by colour of ſuch Writs and Commiſsions under the great Seale: We ſhall leave that preſident with this, that it hath no colour init of a Commiſsion of Array; It's onely to ſwear men to Armes according to a certaine aſsize therein preſcribed, which although it be wholy againſt Law, yet tis not ſo dangerous as ours which leaves all to the diſcretion of Commiſsioners. For that in 48. *H.* 3.

rot. Pat. M. 3. There being then an Invasion feared, the Sheriffe is Commanded *to summon all Knights and Freeholders which are able to bear Arms, and have either 5l. or 10l. land, that they come with speed in their proper persons to the King, where ever he shall be, with Horses and Arms to resist the Kings Forraign enemies*, and this they are to do *upon pain of forfeiture of all their lands*: and they are further thereby commanded *to provide to sustain themselves in the Kings Army for three Weeks after Michaelmas, if need be*: and the Sheriffe there is to provide, *that those Horse or footmen that come to the King, and are not able to maintain themselves, their charges shall be borne by the County, and he to leavy it accordingly*: all which is nothing to the Commission of Array, men are not there to be charged with arms, but they are to come with those that they have; neither can any man justifie that Commission to be legall, except he will say the King may compell his subjects to come to him at his command with horse and arms, upon pain of forfeiture of all their lands, and that men are bound to go to the King to his Hoast, at their own charge, or that the King may charge the County to finde men to serve him in his wars at their own charges, all which are within the sayd Commission.

For the other of 48 *Hen.* 3. *m.* 7. *dorsf.* it hath no shew of a Commission of Array in it, but is only a summons of Escuage for those that held of the King by Knights service.

For the rest of the presidents insisted upon, to prove the power of granting such Commissions to be in the King by the Common Law; they are only quoted, but it appears not by the Answer what they are; they are all in time betweene 23, *Ed.* 1. and 12. *Ed.* 4. during all which time, the Statute of *Winchester*, 13. *Ed.* 1. was in force, and to all of them we say thus much in generall; First, that Commissions of Array might lawfully issue during all that time, that is from 23. *Ed.* 1. till 12. *Ed.* 4. for in all that time the Statute of *Winchester* was in force, but now its repealed: Secondly, That all the Commissions of Array that issued forth in that time, to charge men with Arms, *secundum statum & facultates*, were warranted by that Statute which saith, That all men shall be sworne to Arms, according to the quantities of their lands and goods: and all Commissions that issued after that Stat. which imposed a greater assize, or other penalty to be layd upon the Subiect then were prescribed by that Stat. were all of them against Law.

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The Presidents cited are many of them to charge men with Armes, either *Statum suum decentia*, or *secundum statum & facultates*, or according to the Statute of *Winchester*, and those are all warranted by that Statute as to the point of charging men with Armes; But most of the Commissions that run so, have other clauses in them, which are clearely against Law, which to recite particularly, would too much inlarge this our Declaration.

Of the multitude of Presidents cited there is not one before *Hen.* the fourths time, which agrees with the Commission now in question, but they differ from it in many materiall things. Some of them being onely summons of *Escuage*, for those that hold by *Knights Service*, some of them commanding men to provide horse and Armes for themselves, such as themselves should thinke fit; others of them to assemble together the armed men in their proper Counties for defence of their owne Counties, as those for *Northumberland* and *Cumberland*, were to defend themselves against the *Scots*, and those of *Essex*, *Kent*, and *Suffolke*, for defence of the maritime parts against foraine enemies, nothing at all to the Commission of *Array* now in question. And from the beginning of *H.*4. time, till 12 *E.* 4. there are not above two of the presidents cited, that agree with the Commission now in question: And those that will argue from those Presidents cited in the *Answer*, That the King by the Common Law may grant such a Commission as this, may as well maintaine from them that the King may compell his Subjects to arme themselves upon paine of forfeiture of all their Lands and Goods, or that for not obeying, the King may seize their Lands and Goods, or may grant Commissions to raise what number of men he pleases to serve him in any place that he shall appoint, or that he may compell Counties to find and maintaine Souldiers at their owne charge, all which are against the knowne fundamentall established Lawes and Statutes of the Kingdome, and yet none of these but have warrant from some of those Presidents quoted in the *Answer*.

But it is objected that all the foresaid Commissions for finding of Armes, *secundum statum & facultates*, were warranted by the Common Law, and that the Statute of *Winchester*, 13 *E.*1. extended not to finding of Armes for defence of the Kingdome, for (saith the penner of the *Answer*) *that Statute was onely intended*

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ded to have men arme themſelves for the preſervation of the Peace of the Kingdome, at ordinary times againſt Ryots, Theeves, and Robbers, and not againſt foraine enemies. And this he urges from ſeverall reaſons. Firſt, from the *pettineſſe of the armes impoſed by that ſtatute*, which are not (ſaith he) *fit to defend the Kingdome againſt Invaſions.* Secondly, from *the quantity of Lands and Goods charged*; It is ſaid, *none above* 15. *pound Lands, and* 40. *markes Goods, and ſo under thoſe proportions are charged.* Thirdly, from *the words of the Act, and the Articles of enquiry upon the ſaid Act*, and from *the words of the Statute of* 2 E. 3. *cap.* 6. *The words are, That every one ſhall have in his houſe harneſſe to keepe the peace*, and the Articles of enquiry are onely *for the peace.* Fourthly, In that *none of the Commiſſions after that ſtatute of Wincheſter* 13 E. 1. *did agree with the aſſize therein preſcribed.*

To give particular anſwers to theſe objections. It will be fit to conſider the words of this ſtatute of 13 E. 1. *cap.* 6. Which are: *And further it is commanded that every man have in his houſe Harneſſe for to keepe the peace after the ancient aſſize. That is to ſay; Every man betweene the age of fifteene and threeſcore, ſhall be aſſeſſed and ſworne to armes according to the quantity of their Lands and Goods. That is, to wit, from* 15. *pound Lands, and* 40. *markes Goods, an Hawberke, a Breſt-plate of Iron, a Sword, a Knife and an horſe; and for ten pound lands, and twenty markes goods, an Hawberke, a breſt-plate of Iron, a Sword, and a knife, and for five pound Lands, a doublet, a breſt-plate of Iron, a Sword, and a Knife, and for* 40. *ſhillings Land, and more unto* 100. *ſhil. of Land, a Sword, Bow and Arrowes, and a Knife; and he that hath leſſe then twenty Markes in Goods ſhall have a Sword, Knife, and other weapons; and all that may ſhall have bowes and arrowes out of the Foreſt; and view of armes ſhall be taken two times every yeare, and in all Hundreds and Franchesſes, two Conſtables ſhall be choſen to make the view of armes, &c.*

For the firſt objection, from the *pettineſſe of the armes*, mentioned in this Statute, we ſay that for ought appeares the *Armes* there mentioned were moſt of the Armes then in uſe: There are *Hawberkes*, which the *Anſwer* interprets to be *Gorgets.* There are *Breſt-plates of Iron, Swords, Knives, and Horſes, Bowes and Arrowes:* By *Horſes* there, it cannot *ſecundum ſubjectam materiam*, but be intended of *Horſes with armed men*, otherwiſe what uſe are *Horſes* of, either for preſervation of

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the Peace, or preventing Invaſions, and why the Statute ſhould not extend to all manner of *horſe armes*, there can no good reaſon be given; the Statute being for *Publique defence* ſhall be expounded beneficially for the *Commonwealth*.

For the ſecond objection from the *quantity of the Lands and Goods charged*, being but 15. *li. Lands*, and 40. *markes Goods*, at the higheſt, whereupon it is inferred, *Such a charge is not ſufficient to defend againſt Foraine invaſions, therefore the Statute extends only to proviſion of Armes, to prevent breach of the peace, for which theſe proportions charged may well ſerve.*

For this; we deny that this Statute extends onely to 15. *li. Lands*, and 40. *markes Goods*, and to *proportions under them*: Theſe of 15. *li.* and 40. *Markes*, and the *leſſe proportions*, are put for examples, and not to exclude thoſe that have above thoſe values in Lands or goods; the intent being that every one according to the proportion of his eſtate (be it more or leſſe) ſhall find Armes according to the aſſize therein preſcribed; And this will be cleare from the words of the ſtatute which are generall; *Every man ſhall be ſworne and aſſeſſed to armes according to the quantity of his Lands and goods*, that is the generall rule for armes; And the following words ſetting downe after what proportions men ſhall be aſſeſſed are particular inſtances to direct and guide the Commiſſioners how they ſhall charge all men with armes in the execution of their Commiſſion, *according to the quantity of their Lands and Goods*. And if onely theſe particulers mentioned ſhould be included within the Statute, the former generall words would be voyd and to no purpoſe; and it is a good rule in Law, in expoſition of Statutes, ſo to expound them, that one part doe not overthrow another, but that all parts may ſtand together: It was neceſſary there ſhould be a *particular* aſſize ſet, to take away the *latitude*, that otherwiſe the Commiſſioners might aſſume to overcharge men by reaſon of the former *generall* words; the Statute never intended to exclude them whoſe eſtates were above the examples mentioned, but to have the aſſize there mentioned a preſident for al eſtates after thoſe proportions; it is a rule in Law, *Exempla illuſtrant non reſtringunt legem*; If this ſhould not be the ſenſe of the Act, what juſtice was there in it, to charge men of 15. *li.* land *per Annum*, and to leave out men of 1500. *li.* land *per annum*.

For the objection from the words of the Statute, which ſpeake onely of the *preſervation of the peace*, and the articles of enquiry upon the Statute, which are to enquire *if men have weapons in their houſes for the keeping of the peace*, and the ſtatute of 2 E. 3. *cap.* 6. which ſaith, that *for the keeping of the Peace, the Statute of*

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Winchester shall be observed, we say that it followes not because the Statutes speakes of *preservation of the peace*, that therefore it should not be intended *for defence against Invasions*; Is not the peace as much, nay more broken by *Invasions* and *Rebellions*, then by *Theeves* and *Robbers*? And had not the statute need to extend to those as well as to these? As for the distinction of *ordinary* and *extraordinary* breach, there is no such to be found in the statute, *Et ubi lex non distinguit non est distinguendum*: for the Articles upon the statute that are to enquire onely, *whether weapons be kept for the preservation of the peace*; That shall be intended as well for the preservation of the peace against rebellions and Invasions as against theeves and robbers, and so likewise for the statute of 2 E. 3. *cap.* 6. which saith that *for the preservation of the peace, the statute of Winchester shall be observed*, for (as was said before) the peace is more broken by the one then by the other.

In *Edward* the seconds time as appeares 9 E. 2. *rot. pat. p.* 1. *m.* 22. when the *Scots* were ready to invade the Kingdome, the statute of *Winchester* was recited, and proclaimed, and all men were commanded *to arme themselves according to that statute to resist the Scots, and to defend the Kingdome, and repell the enemies*. The like was 15 E. 2. *Rot. pat.* 2. *p. m.* 7. They in those times thought that statute extended to prevent an *Invasion* as well as to preserve the *peace* at ordinary times.

For the last objection from the Commissions granted after the Statute of *Winchester*, concerning which it is said, first, *they were not grounded upon that Statute, because they did not mention it*, and secondly, that *divers of them doe vary from the assize there prescribed, and so were not grounded upon that Statute but were warranted onely by the Common Law*; we say as before, that all the Commissions that were granted after this Statute which gave power to the Commissioners to charge men *secundum statum & facultates*, for so much were warranted by this Statute, the words thereof being, *that every man shall be assessed according to the quantitie of his lands and goods*, and then sets downe the particular assize that shall be for lands and goods, so that that assize is a direction to the commissioners after what proportion they shal assesse men for their lands and goods in execution of such a generall Commission; and if they varied from that assize, what they did therein was without warrant, and illegall: And for the opinion of the two *Judges* mentioned in the *answer*, that *by presidents in former times, the Kings of this Realme might grant Commissioners of Array for defence of the Kingdome*: It is very true, they might do so at any time from 13 E. 1. the Statute of *Winchester*, till that Statute was repealed, wch was 21.

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Jac. and now it being repealed they cannot grant such Commissions.

But more fully to give satisfaction to all these objections and to prove that the Statute of *Winchester* was intended for provision of *Armes* for the *defence* of the Kingdome, as well as for the preservation of the peace at ordinary times, wee shall put the Statute of 5 *H.* 4. *cap.* 3. the words whereof are, *Be it ordained that the watch upon the Sea coast shall be made by the number of the people in the places, and in manner and forme as they were wont to be made in times past, and that in the same case the Statute of Winchester be kept and observed.* That this Statute of 5 *H.* 4. *cap.* 3. was made for defence of the kingdome, will appeare, first by the Petition upon which that act was passed, which saith that *the neglect of watching on the Sea coasts is to the great damage and perill of the Realme.* Secondly, from the cause of the making thereof, which was this; The yeare before the *French* had invaded the Kingdome, and there was now feare of their returning; and that this was the cause of making that Statute, appeares by the *Parliament* Rolls of that yeare wherein it is declared that the *French* intended forcibly to enter the Kingdome and destroy it, and that Act is made to prevent this invasion, and for defence of the Kingdome, and for this, it saith, *there shall be watches kept on the Sea coasts*, and in that case *the Statute of Winchester shall bee observed*, so that hence it is apparent the Statute of *Winchester* extended to watching upon the Sea-coasts in time of an invasion feared, and therefore was for defence of the kingdome: And this Statute of 5 *H.* 4. is not *Introductio novæ legis*, but onely confirmes the Statute of *Winchester*.

Another proofe that the Statute of *Winchester* was intended for provision of Armes for defence of the Kingdome is the judgement of the Parliament, 3 *R.* 2. *Rot. Parl. n.* 36. in a Petition that passed both Houses; the words of it are, *Item, whereas it is ordayned by the Statute of Winchester and other Statutes that every man shall be armed and arrayed according to their estates for the defence of the Realme, by reason of which Statutes every man is armed according to his estate, and some men arme themselves beyond their estates, as those in Northumberland and the borders:* Complaint is there made that *the Parsons and Vicars take their Armes for mortuaries*, and for this they pray releefe, and that their Armes may goe to their heires or executors for the defence of the Realme: This opinion

of the *Parliament* there answers the maine objections formerly made, as first to that that is objected, that *the Statute of Winchester provided onely for preservation of the peace and not for publique defence*; it is here said in termes that *the Statute of Winchester was for the defence of the Realme*; and for the objection that it extends onely to 15. pound land, and 40. markes goods, and not above, it is here answered in these words, that *by the Statute of Winchester all men shall be armed and arrayed according to their estates for the defence of the Realme, by reason of which Statute, every man is armed according to his estate, and some beyond*; here they declare that the Armes prescribed by that Statute were for defence of the Realme. Secondly, in that it is said, that *every man is armed according to his estate*, it shewes that they in that Parliament deemed that the Statute of *Winchester* extended as well to all proportions above 15. *li.* and 40. markes, as to those under, and excludes none, but includes all.

And lastly, it appeares that if a Commission issue to cause men to be armed and arrayed, *secundum statum & facultates*, it is within the Statute of *Winchester*, although it mention not the assize in particular therein prescribed; for it saith that by that Statute every man shall arme himselfe according to his estate and faculties, and it mentioneth no assize.

And in the time of *Edw.* 3. his learned Councell at Law did then conceive that this statute was made for the safetie and defence of the kingdome, as appeares by one of the presidents cited in the answer *Rot. Sc.* 10. *Ed.* 3. *memb.* 10. where a Commission is granted to cause men to be armed according to their estates, and expresseth the assize in the statute of *Winchester*, and saith that the arming shall be *secundum formam statuti apud Winton. pro securitate & defensione Regni editi.*

We have spent the more time in clearing this because hereupon depends most of the materiall things in the *answer* for the proving of the legality of the Commission by the Common Law, and this being thus cleared we doubt not but it will give satisfaction to any indifferent man.

But before we passe from this Statute of *Winchester* one thing more is observeable, which is, that men were not compellable at the Common Law to arme themselves although it was for preservation of the peace, if they were, that Statute had beene needlesse which is compulsory, yet the penner of the answer will

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will have a power in the king by the Common Law to charge men with Armes for defence of the kingdome. Why ſhall not the Common Law as well provide for the preſervation of the peace of which there is continuall uſe, as for defence againſt invaſions, which are ſeldome attempted? It is a rule in Law that *ad ea quæ frequentius accidunt jura adaptantur*, the Law makes proviſion for thoſe things that there is moſt frequent need of. Before we leave that part of the anſwer where the labour is to prove the ſaid Commiſſion warranted by the Common Law; In regard that the penner of the ſaid anſwer hath endeavoured to prove it by the Conquerors Lawes, and by the preſidents in *Hen.* the thirds time, that the Common Law then was that the King might charge his Subjects with armes for defence of the kingdome, we ſhall by thoſe very Lawes and by preſidents of thoſe and after times make it apparent that the King could not then charge any of his Subjects either to finde Armes or to ſerve in perſon other then ſuch of them as were thereunto bound by their tenures or contracts, nor thoſe any further or otherwiſe then they were thereunto bound by their tenures or contracts; whence it will follow that till 13. *Edw.* 1. there was no Law to compell men otherwayes to finde Armes, then as aforeſaid, and that Law being now repealed, as it was by the Statute of 21. *Jacobi* there is now neither Common Law nor Statute Law to compell any men to finde Armes, but thoſe that are bound to doe it by their tenures or contracts. To make this cleare wee ſhall begin with the Conquerors Lawes, inrolled in the red booke in the Exchequer, the words are, *Volumus etiam & firmiter præcipimus & concedimus quod omnes liberi homines totius monarchiæ Regni noſtri prædicti habeant & teneant terras ſuas & poſſeſſiones ſuas bene et in pace libere ab omni exactione injuſta & ab omni tallagio; ita quod nihil ab eis exigatur vel capiatur niſi ſervitium ſuum liberum quod de jure nobis facere debent & facere tenentur, et prout ſtatutum eſt eis et illis a nobis datum et Conceſſum jure hæreditario imperpetuum per commune conſilium totius Regni noſtri.* Theſe words are plaine and full, that all men ſhall be free from all taxes, and the words *& ab omni tallagio, &c.* makes it apparent that the King cannot require any thing of any free man but what he is bound to do by his tenure; the words are ſo general that they extend to all taxes whatſoever, as well thoſe for defence as others.

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Another Law of the Conquerors is that whereof part is cited by the penner of the Answer but he leaves out the most materiall part of it with an &c. The words are, *Statuimus etiam & firmiter præcipimus ut omnes Comites, Barones & milites & servientes & universi liberi homines totius Regni nostri prædicti habeant & teneant se semper bene in armis & in equis ut decet & oportet.* Thus farre the penner of the answer cites in his *Corrigenda*, leaving out the residue, which is, *Et quod sint semper prompti & bene parati ad servitium suum integrum nobis explendum & peragendū cum semper opus affuerit secundum quod nobis de feodis debent & tenementis suis de jure facere, & sicut illis statuimus per commune consilium totius Regni nostri prædicti; & illis dedimus & concessimus in feodo jure hæreditario hoc præceptum non nostrum sit violatum ullo modo super forisfacturam nostram plenam.* This explaynes the other and shewes what the services are that may be required of the Subjects, that is, that those that hold by Knights service shall alwayes have horse and Armes, and those they must have that they may doe their service to the King or other Lords when it is needfull; these tenures as appeares by the said Lawes, and by the authorities before cited were created for defence, & they were the onely provision that the Conqueror made for defence; and in those Lawes are negative words that nothing else shall bee demanded.

As the Law was in the Conquerors time; so it continued in *Hen.* the thirds time; for then no man was bound to doe any military service except he was thereunto bound by his tenure or contract; and therefore the summons of *Escuage* was to those onely that held by Knights service, they being onely bound to perform that service for the defence of the Realme, & if at any time more was required either for Armes, or otherwise then they were bound to by their tenures, the King did acknowledge it, and then declare and grant to his Subjects, and their heires, that *it should not turne to their prejudice, nor be drawn into consequence or example for after times*: that King would never have done so if he could by the Common Law have compelled his subjects at his pleasure to find Armes & to serve with them. The grants that this King made in this kinde were many, one of which we shall here set downe at large; it was made 48. *H.* 3. *Rot. paten. m.* 2. in these words.

Rex.

Rex omnibus &c. cum venerabilis pater G. Ebrum Archiepiſcopus & alij prelati magnates milites libere tenentes ac omnes alij tenentes ac omnes alij de Regno noſtro nobis nuper in articulo neceſſitatis ad defenſionem ejuſdem Regni contra hoſtilem aduentum alienigenarum ſervitium fecerint & ſubſidium ultra quam temporibus retroactis in aliis ſummonicionibus exercitus noſtri facere conſueverint nos ob fidelitatem & promptitudinem dict. Archiep. & aliorum indempnitate ſua proſpicere volentes concedimus eidem Archiep. Prelatis ac omnibus aliis predictis pro nobis & heredibus noſtris quod id quod nobis in articulo neceſſitatis pred. fecerint ſibi non cedat in prejudicium nec imposterum trahatur in conſuetudinem vel conſequentiam, nec ad hujuſmodi ſervicium vel ſubſidium faciend compellantur ita tamen quód ſervitium ſuum quod nobis debent faciant temporibus futuris cum ſuper hoc a nobis fuerint requiſiti in cujus &c. T. R. apud Weſtm 18. die Octobris &c. It appeares by this Record that all or moſt of the Kings ſubjects in that *articulo neceſſitatis* for defence of the Realm did more then they were bound to doe by their tenures, *ſome did ſervice that owed none*, others *performed more then they were bound to doe*; it is implyed by the Record that they had a larger ſummons then was uſuall in times before paſt, now the King taking notice of their readineſſe to ſerve him, and minding their indempnities doth grant to them and their heires that *what they had done in thoſe preſent ſtraights ſhould not turne to their prejudice, nor be drawne into conſequence or cuſtome for after times*, but yet the King will have *them that owe him ſervice to performe it when they ſhall be required*; which ſhewes that none were compellable to provide armes or ſerve with them but thoſe that were bound thereto by tenure, all elſe are free. v. 48. *H.* 3. *pat. Ma.* 6 accord.

The like appeares by 48. *H.* 3. *M.* 11. *Dorſſ.* to *Norf.* and *Suff.* There it appeares that *forraign enemies had rayſed great forces and made themſelves ready to invade the Kingdome to deſtroy King and people. The Sheriffe* is commanded *to enjoyn all men to prepare horſe & armes to which they are ſworn*, to reſiſt that preſent danger, *no man is to make any excuſe although it was in harveſt time, becauſe the neceſſity admits no delay*. and there the King grants and declares that *what they ſhall then doe ſhall be no prejudice to them, neither ſhall it be brought into cuſtome*. By this it is apparant that all were ſummoned to provide horſe and armes for defence, and that what they did ſhould not be to their prejudice; if in any caſe men were compellable to arm themſelves here was good cauſe for it but if it bee ſaid that *they were here compellable*, why then ſhould the King promiſe that it ſhould not be brought into conſequence, nor ſhouldbe to the prejudice of them or their heires, the like was granted 8. *H.* 3. *Rot. pat. mem.* 6. 2. 6. This King alone did not make ſuch acknowledgment and declaration, but many Kings ſince have done the like: which (had they had ſuch a prerogative to

charge men with armes (as in the anſwer is ſuppoſed) they would not ſo eaſily have made ſuch declara tions againſt their owne right. *Edw.* the firſt as appeares 31. *E.* 1. *rot. pat. Ma.* 27. made the like declaration to his Subjects that came to him with horſe and armes againſt his enemies and Rebels the Scots. The like 11. 12. & 13. *E.* 2. *Rot. Sco. Ma.* 7. 13.

Ao 10. *E.* 2. *rot. pat. p.* 1. *Ma.* 26. It appeares there that the Lords & Commons in 9. *E.* 2. had granted to the King out of every Town (except Cities and Burroughs) a ſufficient man to be armed at the charge of the Towne from whence he came, and the particular armes are there mentioned with which he ſhall be armed. This grant was made to defend the King and Kingdome againſt the Scots, the King being willing to provide for the indemnity of the Lords and Commons as (he ſaith) is juſt he ſhould declares that that grant ſhall not be to the prejudice of them nor their heires, nor be brought into conſequence. The next wee ſhall put is a Commiſſion granted by *Ed.* 3. 19. *E.* 3. *rot. pat. part* 1. *Ma.* 26. *Dorſſ.* directed to diverſe Gentlemen of Lincolne-ſhire, reciting that the Rebells & the Kings enemies, as well French as Scots and their accomplices, had endeavoured with all their force to invade the Kingdome of England; the King to reſiſt them , and to have the Armed power of the Kingdome in readineſſe, for the preſervation of the peace by the conſent of the Prelats, Peeres and other wiſe men, ordained that all but Clergy ſhould be aſſeſſed to armes aceording to an aſſize, then ſet what every one ſhould finde from 5. l. to 100. l. land and ſo upwards. This Commiſſion was grounded upon an Ordinance made by the King, Prelats, Peeres and other wiſe men who were the Kings Counſell, they by that Ordinance preſcribed an aſſize which exceeded that impoſed by the Statute of Wincheſter 13. *E.* 1. Therefore in the next Parliament which was 20. *E.* 3. *Rot. Parl. N.* 12. & 13. This Commiſſion was complained of as appears by the Petitions and the Kings anſwer thereto; in which he ſaith, that they all knew they had often promiſed him in Parliament, for defence and ſafety of the Kingdome of England, to ayde him with their perſons and all they could, and that the Grandees and wiſe men (which were the Kings Counſell) did ordaine the aſſize mentioned in the Commiſſion: yet the King wills and declares in Parliament, that what was done in that neceſſity ſhall not be drawn into conſequence or example: here is the opinion of the Lords and Commons as appeares by their Petition, that impoſing of armes otherwiſe then according to the ſtatute of Wincheſter was againſt Law which the King in his anſwer agrees unto, which is an act of Parliament in point, and proves that it could not be done although for the defence of the Kingdome.

The laſt in this kind that we ſhall inſiſt upon is a *Commiſſion of Array*, which agrees with the Commiſſion now in queſtion in moſt of the particulers therein contained , y t it wants ſeverall of the illegall clauſes that are in

ours.

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ours, It issued 2 *R.* 2. *rot. pat. p.* 1. *Ma.* 9. *Dorss.* It appears by the Record that the Commission issued by the advice of the Ks. Counsell when the Kingdome was in danger by sea and land, yet the King there commands the Commissioners to publish and declare that it is not his intent nor the intent of his Counsell, that the said Ordinance and accord which was then made only for necessity, and for the safety and defence of the whole Realm shall turne to their prejudice, or be brought to example or consequence. By these presidents before cited besides the Conquerours Laws here are 5 of his Majesties Progenitors and Kings of this Realme in imediate discent, disclaiming upon Record any power in the Crown of England by the Common Law of charging the subject with armes or other waies then according to their Tenures, although for defence of the Kingdome diverse of which Kings have bin ever since their times, famous for their wisedome and valour, and knowne to have bin tender of their prerogative, and zealous maintainers thereof; and if the Penner of the answer had produced so many confessions of the Kings right by the subiects, even when their liberties were at the lowest ebbe, we might then have bin more easily induced to beleeve that the King had power by the Common Law to issue such Commissions then from all the Arguments used by him in the answer.

And whereas the Penner of the said answer would insinuate unto the people that we doe not now submit to what our Ancestors have in things of this kind; upon what hath bin said we leave all men to judge whether those Kings before spoken of would have made those Declarations unlesse they had bin desired so to doe by their subjects, and unlesse they had foreseene that without doing thereof they could not have given satisfaction to their subjects in their just rights and liberties.

But if the Commission should faile at the Common Law, then in the answer it is indeavoured to be made good by a statute of 5. *H.* 4. which is said in the answer to be by our former Declaration confessed to be an act, To which wee say first; That it is so confessed in our declaration not simply, but first with reference to the Kings Proclamation which calls it an act, and secondly, By way of admittance only, and if our former declaration had so granted it to be an act as is pretended; we would faine know of the contriver of the answer what was the meaning of these words in the same declaration, Folio 7. *and surely had it bin conceived in those times that the forme of the Commission agreed upon 5. H. 4. there entered had bin by that Parl. enacted they would not have issued so many Commissions of different words and matter*) and againe, Folio, 12. it is said, (That as they did not complaine of it, so they did not give it any establishment by Parliament) But further we say we are not satisfied that that of 5. *H.* 4. concerning the said Commission was an act of Parliament; and the truth of the Case for that stands thus: There were then severall

Commissions of Array had issued into all or most of the Counties of England, all which had one and the same forme, a Copy of one of them is brought to the Commons, they alter diverse clauses in it, and desire the King that no Commission shall goe otherwise or in other words, and the King granted it: It is agreed the Commons did not gainesay the issuing of this Commission, neither can any man say that they desired the issuing of it. If it be objected that their not gainesaying amounted to an implicite consent; admit it so, the question then will be whether this with the Kings consent to it will make it an Act, there being in it neither forme nor circumstances which are usuall for the making acts of Parliament: the Prayer and Petition of both Houses in this or former Parliaments to the King with his assent thereunto, be it for publique Fasts, or the like will not make them statutes or acts of Parliament; yet there is a Petition of Lords and Commons and the Kings assent, which is more then their bare assent to a thing propounded by the King as in this case; neither will any man say that the Earl of Essex is Lord Lieutenant of Yorke-shire by act of Parliament, though his Majesty made him so upon the desire, or by the privity of both Houses of Parliament; If the reason to make it an act of Parliament be because the King desired it, & the Lords and Commons assented to it, then by the same reason it will follow that whatsoever hath beene done in this or other Parliaments by the consent of the King, the Lords and Commons should be an act of Parliament which wee thinke no man will maintaine. The consent of the three estates in Parliament to a thing to be done doth not make the thing consented to an act of Parliament without those formes and circumstances, whereby they declare their intentions to have it an act of Parliament. In former times the regular way for the compleating of an act of Parliament was the Petition of the Lords and Commons, and the Kings Royall assent, and of latter times by bill, which after thrice reading in either House is tendered to his Majesty for his Royall assent, but in our case there is no declaration of any desire or consent that it should be an act, neither is it drawn up into the forme of Statute, or entred upon the statute Roll of that yeare as most of the acts of Parliament then were, neither was it ever printed as most Acts that so much concerned the King and Subjects have usually been, and if the entering of it in the Parliament Roll shall gaine it the opinion of an act of Parliament, by the same reason may it be said that all the *Memorandums* and orders in like manner entered may be called acts of Parliament, which cannot be imagined.

It was not conceived an Act in 7. *H.* 4. *N.* 36. *Rot. Parl.* There this Commission is called a Commission enrolled, and not a Commission enacted,

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which it would have bin, had it beene ſo eſteemed for *N.* 60. in the ſame Parliament Roll, a Petition was preſented to the King & they deſire that it may bee enacted, enrolled, and proclaimed, for a Statute enrolling is not thought ſufficient to make it an Act, and in the ſame Roll ſpeakingof a Petition that was preſented in 5. *H.* 4. for the ſucceſſion of the Crownwhich was then enacted. They call it not a petition enrolled, but a petition enacted or an Act of Parliament throughout the Roll: And it is very probable they would have done ſo in this had they deemed it an Act of Parliament.

But it is further objected that this of 5. *H.* 4. is an Act of Parliament: and that proved by the judgment of the Parliament, 7. *H.* 4. *N.* 36. whereby (ſaith the penner ofthe anſwer) the Clergieare exempted from the Commiſſion of 5. and if they were notbound thereby (and that they could not unleſſe it were an Act) what need they bee exempted?

To which we ſay that it follows not that that of 5. was an Act becauſe in 7. the Clergy were exempted: In 5. there was a Commiſſion iſſuedforth and that for the generalityof the words ſeemed to extend to all perſons, as well Clergie as others, which becauſe it was for defence and granted when the Kingdome was in great danger, no man did oppoſe. Therefore the Clergy being within the words of that Commiſſion deſire now in 7. that they may be charged by themſelves. And in this year of 7. *H.* 4. the cauſe ſtill continuing that occaſioned the iſſuing of that of 5. as appeares by the Hiſtories and Parliament Rolls of 7. the Commiſſion was alſo ſtill continued, which Commiſſion of 5. iſſuing in time of an imminent danger, which danger ſtill continued, the Clergy do not deſire exemption there-from, but that they may be charged by themſelves a part, and not withthe Laity. And it,doth not appear that that of 7. was an act, but only an accord in Parliament which is no more then an Order and this proves rather that that of 5. was no act, for had it ſo bin how could this of 7. (being only an Order of Parliament) have altered it inone of the eſſentiall parts. viz. In the Commiſſioners power who were to make the Array of all Subjects as well Clergy as Lay? Whereas by this of 7. the Clergy are to be Arrayed, &c. onely by the Arch-biſhop: And if that of 7 was an Act, this Commiſſion now in queſtion muſt needs be againſt it, as not excepting the Clergy.

But admitting that of 5. was an Act of Parliament: The queſtion will be firſt, what it enacts; Secondly, for how long time that Act endures,

Before we come to theſe particulars we ſay as we did in our former Declaration, thatthe care of the Commons in the amendment of the ſaid Commiſſion was onely to take outof the ſame ſuch clauſes as were grievous, hurtfull, and dangerous to thoſe Commiſſioners: The Commons did looke to the

Commissioners then named, & not to themselves, knowing that the Law had made sufficient provision to save and defend them from any thing that should be executed upon those commissions. For those clauses in the answer alleaged to extend to others then the Commissioners: Tis true those clauses did seem to enlarge the power of the Commissioners further then it extended after the amendment, yet the maine end of the Commons in taking out those clauses was the indempnity of the Commissioners which they cheifly intended. For the first of the clauses mentioned in the answer to be taken away which was that the commissioners shold cause to be armed al those that were able of body, and had not wherewith to arme themselves. That Clause did concerne the Commssioners, and they had good cause to desire to have it put out; For if they should cause such to be armed as had nothing of their own in the county to stay them, the Commssioners might want their armed men when they had most need of them, which might turn to the damage of the Cōmisioners & subject them to divers questions. And for that other clause of charging men to contribute to the charges of those that went in service. They had good cause also to have that put out, there being so many that were to be charged, and no certaine rule either in Law or the Commission it selfe to direct them in the charge. Wee doe therefore further affirme as we did in our former Declaration, that the intent of the Commons there was not to settle any power of execution of the said commission over the persons of any to be comanded, but only to save the Commissioners in those commissions named from danger, and there was no mistake in us, but in the penner of the answer in affirming the contrary

This will further appeare by considering the first of those questions before propounded namely *what doth the Statute* (admitting it to be one) *enact*?

That will better be answered by considering the words in the roll which are set down at large in our forme Declaration. The words of the prayer are *Prierent au Roy que desore enavant null commission de larrat isseroit autrement ne en autres parroles que est contenus en le dit copie.* In our former Declaration we translated the words *isseroit autrement* &c. to signifie *issue out* or *should isse out otherwise*, &c. but upon further observation of the same words, & comparing them with the words before and after in the said Roll we conceive that the word *isseroit* may have a more apt and proper signification namely shall go, & so the sence of the words will be that no commission of Array, that is, none of those commissions before granted shall go otherwise or in other words, &c. And that this may be the sence of the word *isseroit* appears thus The Commons then knew that before that time Commissions had issued out to most Counties of England (which that they had so issued appeares by the Commissions themsemselves) that these Commissi-

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ons were in the selfe same words with the copie sent tothem; which commissions so issued, then remained in the hands of the Commissioners all which commissions had those very clauses in them which they put out of the copy. They knew that whilst those very commissions so befor e granted remained in the Commissioners hands those clauses which they had raced out of the copy (they being still in the said commissions) could not be taken away out of them by the said Commissioners. Now that those very commissions might from thenceforth be made to go as if the said words and clauses were wholy out, was the maine endeavour of the Parliament: and for that they pray *q'null' Comission de larray isseroit autrement ne en autres parroles, &c.* That is, that none of the said Commissions so formerly graunted(there being then no other commission in question) should goe otherwise or in other words, &c. by which desire of theirs they intended that notwithstanding the commissions formerly granted had other words in them, yet none of those commissions should goe otherwise erin other words then according to the copy corrected by them, and that those words and clauses put forth of the copy should from thenceforth be esteemed of, no other wise then as if they were not at all in the said commission.

Further that the intent of the Parliament w as,that the commissions then formerly issued should goe according to the copy by them amended, and that the Act extended not to any future commissions appears in this, that if this should not be the intent aud meaning of he said act,then the act it selfe which (as appears by the preamble and conclusion) is only intended for the benefit of the Commissioners to whom the commisfions formerly issued would be to them of no avail which cannot be imagined the Parliament ever intended And if the word *isseroit* should intend to enable future Commissioners, it would no way extend to releive the then present Commisfioners,whom the Parliament took speciall care of, and whose cases were only then before them.And that they did not intend to make good any future commissions will appear by this;first that so many commissions were issued immediatly after this Act other wayes and in other words against the very letter and sence of the copy in the roll mentioned; as may appear by those that were graunted immediately after the Act in 6. *H.* 4. which leave out a materiall clause for conducting the men at arms, and armed men; Whereas had it bin intended to extend to future commissions, it should have been a binding president for all commissions that issued out while the Act continued. They must not have issued forth *autrement* or *in autres paroles*: First, they must have had the same cause for their issuing which was an invasion.Secondly, they must have had the same form of words: only *mutatis mutandis* for the Kings name, the Commisfioners

missioners names, and other matters of form. Secondly, that the Parliament intended not to inable the issuing of future commissions, may be further proved from a clause in the said act which is *et que les dits Comissioners &c.* That *the said Commissioners, their Heires, Executors, or Tertenants by reason of any forfeitures or penalties or any other things comprized in the said Commissions, be not or hereafter shall not be any wayes molested, grieved, endammaged or impeached in any time to come.* The Commons knew these Commissioners, and therefore being confident of their integrity, desire that they may not bee troubled or molested for any thing, which is as much as if they had said they are Comissioners, and what ever they doe they shall not bee questioned for it, but it cannot be imagined that a parliament would trust those that after should be Commissioners (whom they knew not) with such a power as to have a Commission wherein they may do or leave undone what they will in execution of it. and not to be questioned for it.

To the other question before propounded *how long this act of 5, H. 4.* (admitting it to be one) *endures*? We say it was but temporary first in respect of the Commissioners, for whom it was made as we have before proved. Secondly in respect of the cause for which that commission was granted; The cause appears by the preamble of the commission it selfe, and by the Parliament rolls of that time, and by our former Declaration to be, That the *French* notwithstanding the present truce had entred the Kingdome and burnt divers places in the Land. Therefore to prevent a second invasion in case their shoud be any and which was then feared, this commision was granted; giving power to the Commissioners to Array, &c. and to vanquish the said enemies. Fixing it to the then particular enemies, and to that particular invasion; So that when ever that war was ended, and the danger of that invasion over, there is an end of the Commision. As if an act of Parliament had been made in 88, to have enabled the Qu. to grant such a commission as this to the then *Ea:* of *Leicest.* or any other to be L. Lieut. *Generall* and to array, &c. and to subdue and vanquish those enemies which were *Spanyards.* Hee by force of that commission could not have executed his power to prevent an invasion from France, neither could the Qu. by vertue of such an act have granted a new commission to him to prevent any other invasion by any other prince. Nor could K. *Iames* after her death have granted a com mission upon such a Statute to prevent another Spanish invasion, because all in such act was but Temporary.

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And for this of 5 (whatever estimation it had of an Act in the time of *H.*4.) we do not find that after his time it was ever mentioned or named, or esteemed to be an Act untill *Trinity Term*, 16 *Car.* in *Pargiters* case in the Kings Bench, where this of 5 *H.*4. was insisted upon, to be an Act of Parliament, and there Judge *Crook* was of opinion that it was no Act; or if it were, it was but temporary, and Master *Pargiter* who was before committed, was bailed.

For the opinion of Sir *Edward Coke* the book is not yet printed, nor have we seen it, and therefore can give no particular answer to it, but this is well known to many of us, that Sir *Edward Coke* in the Parliament 3 *Car.* was of opinion that the Law was defective touching this of Armes, and needed a supply by an Act of *Parliament* which he earnestly desired; And in the second part of his *Institutes fol.*528. In his exposition upon the Statutes of *Confirmation of the Charters of the Liberties*; upon all the Statutes concerning finding of Armes, hee concludes the Law to be, that no man shall be charged to arme himselfe or others; save such as hold by such service of the King or other Lords, whereby they are bound to it, unlesse it be by common consent in *Parliament*, and saith, that that was the common Law, which those Statutes did but affirme, which if it be so (as there's very little doubt of it) it wholly overthrows this Commission.

We have proved in the fore-going part of this our Declaration, that this Commission hath no ground to warrant it either by the common Law, or by the *Parliament*, of 5 *H.*4. We shall now proceed to prove that it's against the Statute of 1 *Ed.*3.*cap.*5.

And although we shall need to say little in this, because most of the arguments used against the former Declaration in this particular are already answered in our discourse upon the Statute of *Winchester*, 13 *E.*1. and in our proofs that it is not warranted by the common Law; yet to give a cleer satisfaction to all indifferent judgments that this Commission is against this Statute of 1 *E.*3. We shall first set down the words of the Statute which are these, *That no man shall from henceforth be charged to arme himself otherwise then he was wont in the time of the Kings Progenitours, and that no man be compelled to goe out of his Shire, but where necessity requireth of sudden comming in of strange enemies into the Realme, and*

 then

then it shall be done as hath been in times past for defence of the Realme.) And we say that this Commission is against both parts of this Statute.

For the first part: It's ordained that none shall be charged to arm himself otherwise then hee was wont in the time of the Kings Progenitors. Which words, *As he was wont*, cannot otherwise be intended, but to relate to the Statute of *Winchester*, 13 *E.*1. for before that time there was no way either compulsory or certain for finding Arms.

But 'tis objected, that this of 1 *E.*3. cannot referre to that of 13 *E.*1, first, because it names it not, which another Act, 2 *E.*3.*cap.*6. doth the yeer after which referred unto it.

Secondly, in the Statute of 1 *E.*3. the words, *as hee was wont in the time of the Kings Progenitours*, cannot intend so late a Statute as that of 13 *E.*1. but intends that none be charged otherwise then *secundum legem & consuetudinem Regni*, which (saith the *Penner* of the *Answer*) is according to the common Law, and so hee makes the Statute of 1 *E.*3. but an affirmation of the common Law.

To the first Objection we say, that there's no necessity that one Statute referring to another, should mention the Statute to which it refers, when it alters nothing in the Statute to which it refers, but it was fit that the Statute of 2 *E.*3.*cap.*6. should mention it, because it enlargeth it, and gives Justices of Peace power to enquire, and punish the breaches of it, but this of j° alters nothing in it.

Secondly, for the other Objection from the words, *as hee was wont*, we say this refers to the assize mentioned in the Statute of 13 *E.*1, which before that Statute was the ancient assize but till that Statute not compulsory, so that that Statute makes the assize legall and compulsory, which before was onely voluntary and so used, and for the words, *as hee was wont, &c.* the meaning is no more then this: hee shall not be compelled to arme himselfe above the assize anciently used, which assize is established by the Statute of *Winchester*.

As this Commission is against the first part of that Act of 1 *E.*3 so 'tis against the second, as also against the Statute of 4 *H.*4.*cap.* 13. which confirms it.

The words are, *No man shall be compell'd to goe out of his Shire, but for cause of necessity of sudden comming in of strange enemies in-*

to

to the Realme, and then ſhall be done, as hath been uſed in times paſt for defence of the Realme) and this is confirmed by 4 *H.*4. which both did confirme the liberty of the Subjects perſons, that they ſhould not be compell'd out of their Counties, but in caſe of neceſſity, and then it ſhould *be done as hath been uſed in times paſt for defence of the Realme*: here's no power given by this Statute, to compell men to goe out of their Counties, but in caſe there be neceſſity by ſudden comming of ſtrange enemies, and then *it ſhall be done as hath been uſed, &c.* And what uſage was that? It was this; In ſuch a caſe men that held by *Knights Service*, or that were tyed by contract were to goe out of their Counties, and no others, and that this was the meaning of the Statute, appears by the exception in 4 *H.*4. where are excepted thoſe that hould by *Knights Service*, and ſuch as were tyed by particular Grants to them made to do ſuch ſervice, and that none elſe were compelled before 1 *E.*3. may further appeare by the Laws of the *Conquerour*, and the Declarations made by *H.*3. and the other Kings before cited.

Now this Commiſſion gives power to the Commiſſioners or any three of them to lead and conduct the armed men, and men at arms to the Sea-coaſts, and other places as need ſhall require, ſo that the Commiſſioners have power given them here to diſpenſe with the Statute at their pleaſures.

But 'tis further objected, men may bee compelled to goe out of their Counties in caſe of neceſſity, and that is urged from the words of the Printed Statute, which (ſaith the *Penner* of the *Anſwer*) are disjunctive *(In caſe of neceſſity and ſudden comming of ſtrange enemies)* where the word *and* is to be taken disjunctively for the word *or* as is uſuall in the expoſition of Statutes, and then ('tis ſaid) that *in two caſes by the meaning of this Statute, men may be compelled to go out of their Counties,* 1 *for neceſſity within the Kingdome* (i.e.) *for a Rebellion.* 2 *for neceſſity riſing from abroad,* (i.e.) *ſudden comming of ſtrangers.*

To this wee muſt needs ſay, that the *Contriver* of the *Anſwer* makes *quidlibet ex quolibet*, he makes a new Statute by putting in the word *and*, where there's no ſuch word, and then expounds the word *and* for *or* there being neither *and*, nor *or*, in the Statute, but the words are as before wee have quoted them, *In caſe of neceſſity of ſudden comming in of ſtrangers, &c.* which ſhew that the *Parliament* intended

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tended by that Act, that no necessity should warrant the compelling men out of their Counties.

And that the words are as wee have cited them, appeares by the recitall of them in 4 *H.*4. and by the Printed *French* Copies of the Statute which wee have seen, which run thus: *Null soit distreints de aller hors de lour Counties Sinon pur cause de necessity de sudden vener de stranges, enemies deins le Royalme, & donque soit fait come ad estre fait avant ces heures pur defence du Royalme.* And agreeable with these is the transcript of the said Statute of 1 *E.*3. remayning in the *Exchequer*, in an old parchment booke, where 'tis said, *hoc statutum recepit* Walterus *de* Norwico *Baro hujus Scaccarii* 20 *Feb.* 2 *E.*3. *per manus* * Johannis *de* Kinnersley, *Clerici ibid. Statut. hic liberantis*. The words are in *French* agreeing *verbatim*, with the *French* Copy before cited.

* This was brought into the Exchequer, & there transcribed within lesse then a yeer after 'twas made, which is most probable to be the truest that's extant.

Agreeing with this is another old book in the said Court, where the same Statute is transcribed and entred. And for further proofe that the Law is so It was so declared by the King, Lords and Commons in this present Parliament, after long debate, in the Act for the pressing Souldiers for *Ireland*, as appeares by the Act it selfe, which being so is the strongest authority to declare a Law that can be. And agreeable with that Declaration is the opinion of Sir *Edw. Coke*, upon the Statute *de confirmatione Chartarum* before cited, *folio* 528. All which authorities are more to be regarded then the bare conjecture of the *Penner* of the *Answer*, who citeth no authority at all to warrant his contrary opinion.

In our former Declaration we affirmed, that this Comission was against the Petition of Right from the grounds therin set forth, which the *Penner* of the *Answer* denies and affirmes, that *the Petition of Right restrains not the King from imposing charges upon his Subjects for defence of the Kingdom, but restrains such charges onely as are for the Kings own profit and advantage*; And this he endevours to make good from two grounds, 1 That *all charges imposed by the King for defence of the Kingdome are out of the words of the Petition*. 2, That *they are not within the intent of it*.

1. To prove that they are out of the words, he saith, that *the Statute extends onely to such taxes or charges, as are yeelded and made*

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as upon loane, gift, benevolence, &c. Which (saith he) *must be intended to some person, and that can be none but the King,*

Secondly, That these charges for defence are out of the intent, he labours to prove upon these grounds; First, hee saith that *the charges imposed upon the subject which occasioned this Petition were loanes, benevolences &c. which were for the Kings use, and not those that were for defence of the Kingdome.* Secondly, that *the old Statutes cited in the Preamble of the Petition* (saith he) *extend to no Charges, but such as were for the Kings profit onely, and those Statutes the Petition intended onely to confirme; For* ('tis said) *the Petition of right intended onely to declare an old and not to make a new Law.*

To every one of these we shall give particular satisfaction, that it may appeare to all indifferent men, how frivolous these objections are, and invented rather to delude the weaker sort of people, then to gaine any credit from them, that understand them.

For the words of the Petition, the Objection stands thus: *It matters not what is in the Preamble of the Petition, the prayer is onely, that no man be compelled to make or yeeld any gift, loane, benevolence, tax, or such like charge without common consent of Parliament, which* (saith he) *from the words* make *and* yeeld, *must be to some person, and that must be to the King, and extends not where it is to or for the Common-wealth.* *Object.*

To this we say, That according to the litterall and Grammaticall construction of these words, *Make or yeeld such like charge*; one may as well be said to make or yeeld a charge, when 'tis for the defence of the Kingdome, as when tis yeelded to the King, and although the *Penner* of the *Answer* observes onely those words, *make* and *yeeld*, to be in the prayer of the Petition, yet he admits the words to be larger in the preamble, but he will have nothing within the Petition, but what's within the prayer. For clearing whereof, it may be observed, that the Lords and Commons doe in the Preamble of the Petition, declare the right of property of the Subjects in these words; *That by the good laws of the Kingdom no man should be compelled to contribute to any taxe, tallage, ayde, or other like charge not set by common consent in Parliament*; which words being so generall and absolute, extend as well to charges imposed for defence of the Kingdom, as to those that are for the King, and that the *Penner* of the *Answer* denies not, so that that Declaration of Law *Answ.*

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in the petition ſtands good; and is not deny'd in any part of the anſwer, and no man can deny, but the charging of men to find Armes for themſelves or others, is a compelling men to contribute to a charge againſt that Declaration: But that the prayer it ſelfe is of as large extent as that part of the Petition appeares by theſe words of the prayer; *Therefore they pray that no man be compellable to make or yeild any gift, loane, benevolence, or ſuch like charge.* &c. by which words *therefore* and *ſuch*, being both relatives the preamble and prayer are neceſſarily joyned together; the Lords and Commons having before declared the Subjects right, doe by the word (*therefore*) make that the reaſon why the King ſhould grant it, and the word (*ſuch*) in the prayer refers to all the charges of what kind ſoever that were mentioned in the preamble.

But the *penner* of the *anſwer* to make good his Conſtruction of the petition of right, puts two inſtances: That *if his expoſition hold not true, then the Kings commanding a City to repaire their walls, or a levell to amend their ſea-banks, will be againſt the Petition of right too.* Wherein we ſhall agree with him: that the inſtances put are againſt the Petition of Right, as well as the Commiſſion of *Array* is: For as we have ſaid before, that none are compellable to find Armes, but ſuch as are thereunto bound by tenure or by contract, ſo we now ſay, that in the caſes put, none are bound to repaire *City walls* or *ſea-banks*, but ſuch as thereunto are bound by tenure, preſcription or contract; Neither are thoſe (that are ſo bound to repaire ſuch Walls or bankes) compellable to doe them by vertue of any Writs or Commiſſions under the great Seale, but there muſt firſt iſſue the due proceſſe of Law, which is a preſentment of a Jury, whereby the cauſe of their charge is to be found, whereunto the parties preſented may have their traverſe which is their legall way of defence in caſe the preſentment be unjuſt, but if they admit the preſentment good, and doe not traverſe it, then the King by Writ may command them to repayre, becauſe there's a Record to warrant that command.

Secondly, as to the charges impoſed on the Subjects which occaſioned this Petition, we ſay they were ſuch as were layd upon the Subjects for the defence of the Kingdome; And that appeares by the words of the Petition, by which it is plaine that the charges complained of were of two natures, firſt, *The Commiſſion for the*

loane,

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loane, that iſſued the yeare before; Secondly, *The charges impoſed by Lord Lievtenants and Deputy Lievtenants*: For the firſt 'tis well knowne, that the grounds of demanding that loane were (as appeares by the Commiſſion it ſelfe) 2 *Car. The Crowne was engaged in a warre, by adviſe of both Houſes of Parliament, whereby the King, his Subjects and allyes were in danger, the parts beyond ſea, where we vent our Cloath, and from which we have our proviſion for ſhipping, were endangered; the great preparations of enemies at Sea and Land did threaten the Kingdome daily; The Kings honour and the ſubſiſtance of him and his people, and true Religion, were all in danger to ſuffer irrecoverably without a ſpeedy ſupply made, which could not ſtay the delay of calling a Parliament. The people are aſſured in the royall word of a King, that all the money ſhould be beſtowed upon the publicke ſervices, wherein all the Subjects have their common Intereſt*: There's onely money deſired to be lent, not for the Kings advantage, but to be employed for publicke defence in time of danger; and this was one of the occaſions of the Petition of Right, and this declared in the Petition of Right to be againſt Law.

And for the other Charges occaſioning that petition by Lord Lievtenants, and Deputy Lievtenants, the allegation of the *Penner* of the *Anſwer* ſeemes ſtrange to us, that *any charges impoſed by them upon the Subjects, ſhould be for the Kings uſe or private advantage*, When thoſe Commiſſions have been ever pretended to iſſue for ſafety and defence of the Kingdome; And the reaſon uſed by him to enforce it ſeemes more ſtrange then the Allegation it ſelfe: That *therefore they were ſuch as were to the Kings uſe, becauſe they were ſuch as the King ought to have borne*; Wherein it is confeſſed that the charges layd upon the Subject for *coate and conduct money, Muſter-maſters wages, &c.* ought to have been borne by the King; and we know not but by the ſame reaſon all other charges that are for the defence of the Kingdome ought to be borne by the King; And (if ſo) from that argument of his it will follow, that all charges impoſed for defence are to the Kings uſe, becauſe they are to be borne by the King, and therefore againſt the Petition of Right.

As to the old Statutes mentioned in the Petition of Right, 'tis ſaid in the anſwer, that *they onely extend to reſtraine ſuch Charges as were for the Kings advantage, and not ſuch as were for the defence of the Realme, thoſe and not theſe being the occaſions of thoſe lawes.* *Object.*

To

Answ.

To which we say; we find not that any King of this Realme did ever pretend any power of imposing Charges upon his Subjects for his owne private gaine; and so such charges as were never imposed, could not possibly be the occasions of those lawes, neither needed there any Law to take away a power, which was never challeng'd or pretended to: But the truth is, most of those illegall taxes, and charges which have heretofore been imposed by the King upon his people, have been ever pretended for publicke defence, which occasioned those severall lawes mentioned in the Petition of Right, which referres to all Statutes formerly made to that purpose.

The first Statute we shall mention which is included within the Petition of Right by the words there (*other good lawes and Statutes*) is that of 25.*E.*1. The King there grants, that *he will not draw aydes and taxes into Custome for any thing that hath been done heretofore, be it in roll or any other president that can be found.* And further grants, that *for no businesse from thenceforth hee should take such manner of aydes, taxes or prizes but by common consent of the Realme, and for the common profit thereof, saving the ancient prizes due and accustomed.* By which it appeares that no ayde or taxe can be taken without consent in Parliament, although it be for the profit of the Realme.

The causes of making this Statute appeare to be, That the Subjects had been much charged with aides and other taxes for defence of the Realme, which they desired might not turne to their bondage, and further desired the King to seale Articles, which they say, are for the common good, and for redresse of their grievances, which the King refusing, divers great Lords left the Court, and the people were generally discontented; whereof the King takes notice, and thereupon 12 *Augusti* the King, (as appeares by the Patent roll of 25.*E.*1. *M*^{a}.7.) taking notice of their discontentments, declares, *that without the aforesaid Taxes hee could not have defended the Realme. Yet He is sorry for it, and prayeth them that this may be His excuse, as having done these things neither to buy Lands, Castles or Townes, but to defend himselfe and the whole Realm: And that if He returned from* Flaunders *whether He was then going, He would let all men know, that he would amend all, for the honour of God, and the content of His people: And that* He *had done much already, and if* He *died* His *Heire should make amends.*

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And in *October* following this Statute was made, which being compared with the aforesaid Declaration, shewes plainly that the Grievance against which this Law was made, was those Taxes formerly taken by the King for defence of the Kingdome: And now the King will for no businesse take any Taxe, Aide &c.

The next Statute which We shall mention, is that *De Tallagio non concedendo* cited in the Petition of Right, The words whereof are, *No Tallage or Ayde shall be set or levyed by Us, or our Heires, in our Kingdome, without the good will and assent of the Archbishops, Bishops, Earles, Barons, Knights, Burgesses, and other Freeholders of the Kingdome.* This Statute prohibits all charges upon the people, although for defence, the words being, *No Tallage or Ayde shall be layd by Us*, It sayth not, *for Us*, but *by Us*, which extends to all charges layd by the King whatsoever they be.

The next Statute is that of 14 E. 3. *cap.* 1. The Subjects having then granted to the King a great subsidie for his businesse, aswell on this side as beyond the Seas, they feared this might be brought into example, Whereupon the King grants *It shall not, Nor that they be from henceforth grieved to make any Ayde or charge, if it be not by common consent in Parliament.*

This Act is generall, and extends to all charges to whatsoever purpose imposed.

Another Statute which We shall observe, is that of 1. R. 3. *Cap.* 2. which recites, That *the Commons by an unlawfull invention had beene put to great charges, and especially by a new Imposition, called a Benevolence,* and sets downe the mischiefes following it; and then Enacts, That *the Subjects be no way charged by any such charge, Exaction, or Imposition, called a Benevolence, or by any such like charge:* The words are generall, and include all charges, aswell such as are for defence of the Realme, as such as are for the King, the Statute speaking not of *charges to the King*, but of *Exactions, charges, and Benevolences*, which men pay against their wills.

Having now not onely freed the Petition of Right from those objections, but (in doing that) cleared the meaning both of the same Petition, and of the old Statutes therein recited, that they were made to free the Subjects from all Taxes and charges, although for defence of the Kingdome, because We desire to give full satisfaction to all men in so weighty a matter as this, being of no lesse conse-

quence then whether there be any *Meum* and *Tuum* betweene the King and his Subjects: We shall further cleare this Our sence of the Petition of Right, that it did intend to take away all charges of what nature soever to be imposed upon the Subjects by the King, although for defence of the Kingdome in time of danger, by authorities beyond all exception.

First by the opinion of the Lords and Commons, at the time of the framing the Petition of Right.

Secondly the opinion of the King, the Lords and Commons, after the Petition passed.

For the first, There was a saving offered to be added to the Petition, before the passing of it, in these words (*Wee humbly present this Petition to your Majestie, not onely with a care of preserving our owne liberties, but with a due regard to leave intire the Soveraigne Power, wherewith your Majestie is trusted, for the protection, safetie, and happinesse of your people.*)

This saving was considered of by the Commons, and after a full debate, resolved that it ought to be rejected, and after severall conferences had with the Lords about it, they agreed with them: The reason of which rejection was, for that if it had beene added, it would have made the Petition destructive of it selfe, by admitting that the King by his Soveraigne power, wherewith the Law had intrusted Him, for the protection, safety, and happinesse of his people, might impose any Aide, Taxe, Tallage, or charge upon his people, although by His Ordinary power He could not do it. And this had left the Subjects in worse case then it found them.

For the second, to wit the Judgement of the King, the Lords and Commons, after the Petition passed, There was a Commission questioned in Parliament, called the Commission of *Excise*, dated after the summons to that Parliament; It was directed to 33. *Lords* and *Privie Counsellours*, and they commanded *to rayse monies, by Impositions or otherwise, as they in their wisedomes should find convenient*: and the causes why monies were to be raised, are expressed, *The safety of the King, Kingdome, and people, the Kings Friends and Allyes, which without hazard of all can admit no delay, and the necessity so inevitable, that forme and circumstance must rather be dispenc'd with then substance lost; The Commissioners must be diligent in the service, as they tender his Majesties Honour, the safety of the Kingdome and people.* In that Parliament of 3.

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Car. this Commission was resolved by the Lords and Commons to be against Law, and contrary to the Petition of Right, and upon the Lords desire to His Majestie the same was cancelled in His Majesties presence by His command, and was brought cancelled to the House of Lords, by the then Lord Keeper, and by them afterwards sent to the Commons.

By all that hath bin said, It appears that to defend the Kingdome, in time of imminent danger, is no sufficient cause to lay any Taxe, or Charge upon the Subjects, without their consent in Parliament.

Wee will conclude all with the Act made this present Parliament, Intituled, *an Act for declaring unlawfull and voyd the late proceedings concerning Ship-money, and for the vacating of all Records and Processe concerning the same.* This Act recytes, That *divers Writs had issued to charge the severall Counties of this Realme, to provide and furnish Ships for his Majesties service, Processe went out of the Exchequer against* John Hampden *Esquire, to appeare and shew cause why he should not be charged with a summe of money assessed upon him for that cause, he demur'd, the case was adjourned into the Exchequer chamber, and the major part of the Judges agreed that Master* Hampden *should be* charged: *the main ground being* (as is recyted in the Act) *That when the good and safetie of the Kingdom in generall is concerned, & the whole Kingdom in danger, the King might by Writ under the Great Seale of* England, *command all the Subjects of this his Kingdome, at their charge, to provide and furnish such number of Ships, with men, Victuals, and Munition, and for such time as the King should thinke fit, for defence of the Kingdome from such danger, and that by Law the King might compell the doing thereof, in case of refusall or refractorinesse; and that the* King *was sole Judge of the danger, and when and how the same was to be prevented. According to which grounds and reasons, all the Judges of* England *had beene advised with by his Majesties command, who did subscribe an Extrajudiciall opinion to that purpose, which opinion with their names that subscribed it, were inrolled in severall Courts at* Westminster, *and judgement given against Master* Hampden *accordingly.* But the Charge, Writs, Opinion of Judges, and Judgement, are all Enacted to be against the Lawes and Statutes of this Realm, the Right of property, the Liberty of the Subject, former Resolutions in Parliament, and the Petition of Right.

And that in reason differs little from this of charging men with Armes, onely this seemes stronger against the charge, then that of Ship-money. There no money was to come to the Kings Purse, but

onely Ships, Men, Munition, and Victualls, to be provided, and yet that is declared to be against the Petition of Right, though now men be made beleeve, that this charge with armes is not against that Petition, because the Armes are their owne goods that are charged, and no valuable thing comes to the Kings purse by them, but tis for defence onely. And further by that Writ, the Sheriffe was to charge men *secundum statum & facultates*, as in this case the Commissioners are to charge men with armes. There, the Refusers to be Imprisoned, so here; the benefit of the Service there, was for the defence of the Kingdome, and so also here; and yet declared (as we have said) to be against the Lawes of the land, the Right of property, the Liberty of the Subject, former Resolutions in Parliament, and the Petition of Right.

And to make good that charge of Ship-money, most of the arguments were used, that are now urged in the Answer to make good this Commission, but they all fayled.

Vpon that which hath been said in this, and our former Declaration, we doubt not but all indifferent men wil be satisfied, that this Commission of Array is ful of danger and inconvenience to the Subjects of *England*, and against the Fundamental laws of the land, both for Property of goods & Liberty of person.

I. For Property. 1. It compels men to lay out their Estates for buying of Arms, as many, and as often as the Commissioners please, so their Estates are subiect to the pleasure of the Commissioners. 2. It inflicts a penalty of forfeiture of the Armes, when men shew not their owne, and this done without any processe of Law, or judiciall proceedings, for which there's no colour of Law, nor one word in the Answer to iustifie it, other then the bare Commission it self.

II. For Liberty of Person. 1. This Commission compels the Subiects of what degree or quality soever, to be arrayed, mustered, put into Companies of 20. ies. 100ds. 1000ds. to go out of their owne Counties, to the Sea-Coasts, or elsewhere, and al at the Commissioners pleasure, which is against 1 E. 3. 4. *H.* 4. And the Declaration of the Law in the Preamble of the Statute for presing of Souldiers for *Ireland*, made this present Parliament. 2. In that if they obey not the Commissioners precepts, it gives them power to imprison their persons, and that without any legall Tryall, which

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is againſt the Statute of *Magna Charta*, and the Statute of 25. E. 3. And not a word to defend this in the Anſwer, although 'tis ſaid the whole Commiſsion is legall; and in all theſe particulars this Commiſsion is againſt the petition of Right, and the Lawes therein recited.

2. As it is againſt the fundamentall Lawes of the Realme, ſo no Statute makes it good.

3. As for the granting of it now. It's made uſe of in an other way then ever any was executed, or intended to bee executed by thoſe Commiſſions in 5. *H.* 4. they having bin uſed to make defence againſt invaſions, and for nothing elſe: but all men ſee to what purpoſe this Commiſſion is now ſet a foot.

As for the Commiſſion of Lieutenancy, which hath continued ſo long, and to which this is ſaid to be ſo like, We ſay that till about 26 *Eliz.* The Commiſſions to Lord Lieutenants did not very frequently iſſue, and that thoſe have bin often complayned of, and never allowed in any Judiciall way, but have been upheld, by power rather then by Law: for it had bin eaſie to have tryed the Legality of them heretofore, upon defaults at Muſters, but the defaulters were ever preſented to the Lords of the Councell, and there puniſhed. and theſe Commiſsions of Lieutenancy have bin often complayned of in Parliament, but the ſodain diſſolution of late Parliaments hath prevented the final determination of them.

And for the often iſſuing of them, in the times of learned Judges, without exception to them, its no more prooſe to ſhew they are Legall, then the frequent preſidents from 29 *Eliz.* to 3 *Car.* of iſſuing Commiſsions for executing Martiall Law in times of Peace will prove that's legality; yet there are more preſidents for ſuch Commiſsions betweene thoſe times, then all thoſe cited in the Anſwer for warranting the Commiſsion of *Array*.

As for the *Militia*, the reaſons why that was ſet on foot, have bin heretofore fully declared, and therefore wee ſhall not repeat what hath bin ſaid in that particular, but ſhall referre to our ſeverall Declarations touching that point.

For the Stat. of 11. *H.* 7. It's confeſſed in the Anſwer to bee nothing materiall to the Commiſsion in Queſtion, neither ſhall wee need to ſay any thing of it, but referre them that deſire to know our ſence thereof, to our Declaration made concerning *Hull*, 26 *May*, 1642.

And the Lords and Commons doe upon the whole matter here conclude, as they began in their former Declaration touching this Subject, that they are very much agreeved, that after so many Declarations, and solemne Protestations made by his Majesty, to rule by the known Laws of this Land, His Majesty by advice of ill Counsellors, should be perswaded to set such a Commission on Foot as this is, which is so cleerely contrary to the fundamentall Lawes of this Land, the Right of property, & the Liberty of the Subject, contrary to former Resolutions in Parliament, and to the Petition of Right: And the Lords & Commons do & shal adhere to their former Votes & Resolutions, that all those that are actors in the putting of this Commission of *Array* in Execution, shal be esteemed disturbers of the Peace of the Kingdome, and the Properties and Liberties of the Subjects.

For the Corrigenda, *at the end of the Answer.*

The Lawes of *Edward* the Confessour, are there cited, whereof the words are, *Debent enim universi liberi homines, secundum feodum suum, & secundum statum suum, arma habere, & illa semper prompta conservare, ad tuitionem Regni, et servitium dominorum suorum, iuxta praeceptum Domini Regis explend. & peragend.* This was only for such Freemen, as by their Tenures were to find Arms for the Defence of the Kingdom, and for the performance of the service of their Lords, which is only for their Tenures, and so it may be legall.

That of the Conquerors Lawes is before Answered in the Declaration.

For that of *Hoveden*, it is *fol.* 350. If all had bin set downe that that King did at that time, concerning Armour and Armes, which the Penner of the Answer leaves with an *&c.* Men might better have judged of the legality of that Assize by those other things that are there inserted; and it may as well be proved from that, that those that have Arms may not alyen them, nor convey them to any upon any occasion; that armes shall go to the Heire, not to the Executor; that the Guardian shall have them during the Heires minority; that no man shall have more Armes then that Assize; that none shall convey Armes out of *England*, nor sell any to such as will; that no man shall buy or sell a Ship to go out of England, neither convey any Tymber thence: all which are there enioyned as well as this of Armes:

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Armes: and the same authority is for those, as for Armes: so that the bare citing of these, will sufficiently refute the supposed legality of the other, touching armes, and besides, all this was before the Statute of *Magna Charta*, whereby the subjects liberties were setled.

For that of King *Iohn*, in *Mathew Paris*, fol. 234. the writ is there to summon *Comites, Barones, Milites, & omnes liber. homines quicunque sint, vel de quocunque tenent, qui Arma habere debent, vel Arma habere possint, & qui homagium nobis, vel ligeantiam fecerunt, quod sicut nos, & seipsos, & omnia sua diligunt, sint apud Doveram ad instans clausum Paschæ, bene parati cum equis & armis, & cum toto posse suo ad defendend. caput nostrum, & capita sua, subpæna Culvertagii.* This is onely for men to goe with their Armes, such as have them; but none are hereby compelled to provide Armes that have them not, that's not materiall to the Commission in Question.

FINIS.

Die Jovis, 12. *Jan.* 1642.

IT is this Day Ordered by the Commons in Parliament Assembled, that M. *Sam. Browne*, a Member of the House of Commons, be desired to have a care of the Printing of a Booke Intituled, *A Second Remonstrance*, or *Declaration of the Lords and Commons*, concerning the Commission of *Array &c.* and that none presume to Print it, but such as the said Mr. *sam. Browne* shall appoint.

Hen. Elsing, Cler. Parl. D. Com.

I appoint *John Wright* and *Richard Best* to Print this Declaration.

Samuel Brown.

*EC65.G798P.643sc

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